

FILED

18 OCT 17 AM 11:50

The Honorable Timothy A. Bradshaw
KING COUNTY

SUPERIOR COURT CLERK

E-FILED

CASE NUMBER: 18-2-14942-8 SEA

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JAMES EGAN, individually,

Plaintiff,

v.

CITY OF SEATTLE, a Washington municipal
corporation,

Defendant.

CASE NO. 18-2-14942-8 SEA

NON-PARTY EMC RESEARCH,
INC.'S NOTICE OF
DISCRETIONARY REVIEW

ARTHUR WEST,

Plaintiff,

v.

SEATTLE CITY COUNCIL, *et al.*,

Defendants.

CASE NO. 18-2-15000-1 SEA

Pursuant to RAP 5.1, Non-party EMC Research, Inc. ("EMC") seeks discretionary review by the Court of Appeals, Division I, of the Honorable Timothy A. Bradshaw's Written Supplemental Order Granting in part Plaintiff James Egan's Motion to Compel (Non-party) Compliance with Subpoena. Attached as **Exhibit A** to this Notice is a copy of the October 16,

1 2018 Order. Attached as **Exhibit B** is the trial court's October 10 order, of which EMC seeks
2 review solely with respect to the portion of the trial court's order granting the motion to compel
3 compliance with subpoena.
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6 DATED this 17th day of October, 2018.

7 **IMPACT LAW GROUP PLLC**

8 /s/ Jonah O. Harrison

9 Jonah O. Harrison, WSBA #34576

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15 *Counsel for EMC Research, Inc.*
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CERTIFICATE OF SERVICE

I, Tori Harris, certify under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

I am employed by the law firm of Impact Law Group PLLC.

At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On the date set forth below I served the foregoing document in the manner noted on the following:

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
Lincoln C. Beauregard, WSBA #32878 Julie A. Kays, WSBA #30385 Connelly Law Offices, PLLC 2301 N. 30 th Street Tacoma, WA 98403 lincolnb@connelly-law.com jkays@connelly-law.com <i>Attorneys for Plaintiffs</i>	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> E-service via e-filing portal pursuant to King County LGR 30 <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> U.S. Mail
Peter S. Holmes, WSBA #15787 Gary Smith, WSBA #29718 Michael K. Ryan, WSBA #32091 Seattle Attorney's Office 701 Fifth Avenue, Suite 2050 Seattle, WA 98104 pete.holmes@seattle.gov gary.smith@seattle.gov michael.ryan@seattle.gov <i>Co-Counsel for Defendants</i>	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> E-service via e-filing portal pursuant to King County LGR 30 <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> U.S. Mail

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PARTY/COUNSEL	DELIVERY INSTRUCTIONS
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Arthur West 120 State Avenue N.E., #1497 Olympia, WA 98501 <u>awestaa@gmail.com</u> <i>Pro Se Plaintiff</i>	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> E-service via e-filing portal pursuant to King County LGR 30 <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> U.S. Mail

DATED this 17th day of October, 2018 at Seattle, Washington.

IMPACT LAW GROUP PLLC

/s/ *Tori Harris*

Tori Harris

EXHIBIT – A

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6 **SUPERIOR COURT OF WASHINGTON FOR**
7 **COUNTY OF KING**
8

9 JAMES EGAN,

10 Plaintiff,

11 vs.

12 CITY OF SEATTLE,

13 Defendant.
14

No. 18-2-14942-8 SEA

SUPPLEMENTAL ORDER ON
PLAINTIFF'S MOTION TO COMPEL
(NON-PARTY) COMPLIANCE WITH
SUBPOENA

15 This matter supplements the Court's Order of 10/10/18 on Plaintiff's Motion to
16 Compel.

17 IT WAS ORDERED that the Motion was Denied in Part, Granted and Deferred in
18 part.

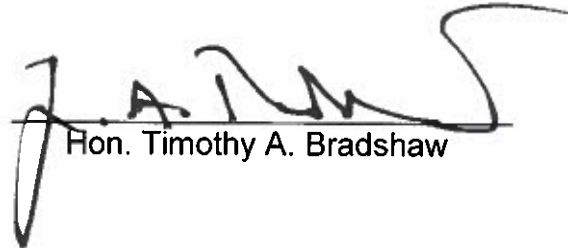
19 The remaining issue, held in abeyance, concerned the production of the online
20 presentation¹ shared with councilmembers. The Court found the presentation to
21 councilmembers and staff potentially highly relevant to this case as it may characterize,
22 and imbue with (OPMA) meaning, the urgency and activities at issue. The court further
23 founds that the need for the online presentation would be informed by the City's
24 subsequent disclosures, if any², and this Court's rulings on the related motions to be
25 heard October 15, 2018.
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28 ¹ Not the underlying research methodologies and proprietary systems, etc.

29 ² Which may obviate the need for any production from EMC.

1 At the hearing, the City represented and confirmed that neither it nor its
2 employees are in custody of any such materials. Accordingly, it is HEREBY ORDERED
3 that third-party EMC Research, Inc. is to produce the material³ within three days.
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5 SO ORDERED this 16th day of October, 2018.
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8 Hon. Timothy A. Bradshaw
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³ And subject to appropriate confidentiality provisions, if any.

EXHIBIT – B

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6 **SUPERIOR COURT OF WASHINGTON FOR**
7 **COUNTY OF KING**
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9 JAMES EGAN,

10 Plaintiff,

11 vs.

12 CITY OF SEATTLE,

13 Defendant.
14

No. 18-2-14942-8 SEA

ORDER ON PLAINTIFF'S MOTION TO
COMPEL (NON-PARTY) COMPLIANCE
WITH SUBPOENA

15 This matter came before the Court on Plaintiff's Motion to Compel and the Court
16 having considered all pleadings, declarations, and exhibits in this matter,

17 NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion is Denied in
18 Part, Granted and Deferred in part.

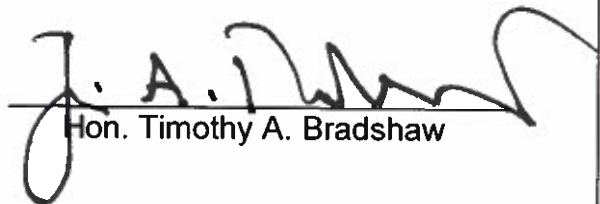
19 The subpoena at issue, a matter of record, was served upon a non-party, namely
20 EMC Research, Inc., and pursued five areas (items 1 and 2 appear duplicative),
21 including 1) "polling results," 3) "all forms of documentation related," "popularity polls," 4)
22 all communications with an elected member of the City of Seattle," 5) "communications
23 shared with David Rolf and Nick Hanauer", and 6) "consulting contracts." Responsive
24 Declarations filed by EMC have since clarified its relationship with defendant and the
25 potentially producible material at bar: EMC was not retained by the City or a City Official
26 on the head tax issue;¹ and its interaction was confined to an "online presentation" as
27 copies of the polling data were not shared.
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¹ The client is the PAC Bring Home Seattle, not councilmembers.

1 Tailoring competing interests and concerns, the Court DENIES, generally,
2 Plaintiff's Motion regarding the above subpoenaed items as overbroad, encroaching
3 upon proprietary business material and billing/fee structure, and communications with
4 clients involving the non-party associational privilege. Those aspects of the propounded
5 subpoena are therefore quashed.

6 The remaining issue, thus, becomes the production of the online presentation²
7 shared with councilmembers which turns on it's a) materiality and b) the ability of
8 obtaining the information by other means. The Court finds that the presentation to
9 councilmembers and staff is potentially highly relevant to this case as it may
10 characterize, and imbue with (OPMA) meaning, the urgency and activities at issue. The
11 court further finds that the need for the online presentation will be informed by the City's
12 subsequent disclosures, if any³, and this Court's rulings on the related motions to be
13 heard October 15, 2018. In this specific respect, the Motion is GRANTED, and held in
14 abeyance.

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16 SO ORDERED this 10th day of October, 2018.

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19 Hon. Timothy A. Bradshaw
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² Not the underlying research methodologies and proprietary systems, etc.

³ Which may obviate the need for any production from EMC.